IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

Bail Appl..No. 4585 of 2007()

CP.105/2006 of J.M.F.C.,KUTHUPARAMBA
CRIME NO.03/06 OF KUTHUPARAMBA POLICE STATION

.....

: PETITIONER/1ST ACCUSED

P.P.JAYARAJAN(SHOWN AS ANIYERI RAJAN
IN THE FINAL REPORT), S/O KUNHIKANNAN,
JAYA NIVAS, NIRMALAGIRI, NOW RESIDING AT
NITHYANANTHA, KARANTHAKAD, KASARAGOD.

BY ADV. SRI.E.C.BINEESH

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4585 of 2007

Dated this the 30th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Section 308 and 332 I.P.C. He is the 1st accused in the case. Investigation is now complete. Final report has already been filed. The petitioner has come to the Court at this juncture with this application under Section 438 Cr.P.C.

2. The learned Public Prosecutor submits that the Investigating Officer does not now want to arrest the petitioner, the final report having already been filed. It is for the petitioner to appear before the learned Magistrate and seek regular bail, submits the learned Public Prosecutor.

3. I find merit in the stand taken by the learned Public Prosecutor. I find no reason to invoke the powers under Section 438 Cr.P.C though this Court in the light of **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662] does have jurisdictional competence to invoke the jurisdiction under Section 438 Cr.P.C. This I am satisfied is an eminently fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary course.

4. In the result, this application for anticipatory bail is, dismissed, but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-